

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FIFTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

And

THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION NO : 15957 of 2004

Between:

The Chair Person, Municipal Council, Srikakulam.

..... PETITIONER

AND

- 1 P. Surendra Kumar, S/o Late Ramayya, Bill Collector (U/Dismissed),
r/o Katteri Street, Srikakulam District.
- 2 The Regional Director-cum-Appellate Commissioner, Municipal
Administration, Government of A.P., Visakhapatnam
- 3 The Commissioner and Director of Municipal Administration, Lower Tank
Bund Road, Hyderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue Writ, order or direction particularly one in the nature of Writ of Certiorari to call for the records relating the O.A. No. 5209/08 on the file of the Andhra Pradesh Administrative Tribunal and Consequently set a side the orders dt 21-2-2003 passed in O.A. No. 5209/98.

Counsel for the Petitioner: MR.S.NAGESWARA REDDY

Counsel for respondent No.1: MR.A.SUDERSHAN REDDY

Counsel for the Respondent Nos.2 and 3: GP FOR SERVICES I

The Court made the following:

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ORAL ORDER: (per GB.J.)

The Writ Petition is filed by the Municipal Council, Srikakulam, assailing the order passed by A.P. Administrative Tribunal (hereinafter referred to as the Tribunal) in O.A.No.5209 of 1998, dated 21.2.2003.

2. The 1st respondent was working as Bill Collector. While so he was alleged to be unauthorisedly absent from 19.6.1995. Though the charge memo dated 30.6.1995 and another charge memo dated 13.7.1995 were issued, the 1st respondent did not respond to the said charge memos. Thereafter an Enquiry Officer was appointed, who conducted an enquiry and submitted his report on 18.10.1996. Ultimately a notice was issued to the 1st respondent and even to that notice also the 1st respondent failed to respond. Finally he was dismissed from service by an order dated 22.8.1997. Against the said order of dismissal, he filed an appeal before the appellate authority and the appellate also confirmed the dismissal order and dismissed the appeal. Aggrieved by the said dismissal order as confirmed by the appellate authority, the 1st respondent filed the above OA. The learned Tribunal having found that the Enquiry Report was not furnished to the 1st respondent, set aside the order of punishment and gave liberty to the authorities to resume the proceedings after furnishing the Enquiry Report, and allowed the OA. Against the said order, the Municipal Council has filed the present Writ Petition.

3. The learned Standing Counsel appearing for the petitioner-Municipal Council submits that the order of the Tribunal is wholly illegal and contrary to law. He submits that the 1st respondent never responded to the charge memos issued to him nor the enquiry proceedings, and therefore he cannot be said to be prejudiced in any manner. Had he really participated in the enquiry, the Enquiry Report would have been served on him, but as his whereabouts were not known, the Enquiry Report could not have been furnished to him. Therefore, the order of the Tribunal is liable to

be set aside.

4. The learned counsel for the 1st respondent submits that though the 1st respondent participated in the enquiry, the enquiry report was not furnished to him, and there is a clear finding to this effect in the order of the Tribunal. Therefore, the order of the Tribunal cannot be said to be either illegal or irregular.

5. The Tribunal while dealing with the above aspect, observed as follows:

“It is seen that certain charges have been leveled against the applicant regarding his unauthorized absence from duty from 14.6.1995, and not handing over bill books, misappropriate of Rs.3.90 lakhs relating to property tax and water charges collected by him. It is also seen that the Chair Person of Srikakulam Municipality suspended the application earlier through his orders dated 7.8.1995. The Municipal Health Officer was appointed as an enquiry officer to conduct detailed enquiry into the charges framed against the applicant. It is only in order to avoid any delay, especially in view of the directions given by this Tribunal to conclude the disciplinary proceedings within three months, these orders are passed. It is also stated that the applicant did not appear before the enquiry officer to offer his defence. It is also stated that copy of the enquiry officer's report was not furnished to the applicant on the ground that the applicant had not sought for the same. A perusal of the orders issued by the Regional Director, while rejecting the appeal of the applicant, also shows that he held it as frivolous allegation the fact that the applicant was not provided with the enquiry report.

Thus, it is clear that a copy of the enquiry officer's report was not furnished to the applicant. The mandatory procedure prescribed under the APCS (CC&A) Rules is to be strictly adhered to especially when major penalties are contemplated to be awarded. The question of the applicant seeking the same does not arise. The respondents are duty bound to furnish a copy of the enquiry officer's report. It is seen that non-furnishing of the same acted to the prejudice of the applicant's interest of defending his case. Thus, it is to be necessarily held that this lapse on the part of the respondents is fatal. Proceedings initiated against the applicant and orders issued dismissing from service, thus vitiated the entire proceedings from the stage of conclusion of enquiry and submission of enquiry report onwards.

Thus, in view of my above findings, the impugned orders are set aside and the OA is accordingly allowed.

The respondents are at liberty to resume the proceedings against the applicant, if they so choose, from the stage of conclusion of the enquiry against the applicant and furnish a copy of the enquiry officer's report to the applicant before taking further action”.

6. The factual aspect is not placed before this Court with regard to the situation as to whether the 1st respondent has, in fact, participated in the enquiry or not, and if so the reasons for not furnishing the enquiry report to him. We are not inclined to go into that aspect at this juncture. Suffice it to say that the Tribunal had given liberty to the authorities to proceed with the enquiry after furnishing the enquiry report. Since the Rule prescribed that the enquiry report shall be furnished, it is incumbent on the part of the authorities to furnish the same to the 1st respondent and proceed further, if they so choose. Under those circumstances, we do not find any ground to interfere with the order of the Tribunal. However, we make it clear that the 1st respondent shall be deemed to have been placed under suspension from the date of dismissal till the final orders are passed as directed above.

7. We also find that there is any amount of laxity on the part of the Municipal Council. The order was passed by the Tribunal on 21.2.2003 and the Writ Petition is filed on 3.9.2004, after a lapse of 1.1/2 years and the reasons are not forthcoming for such a delay nor they stated in the affidavit filed in support of the Writ Petition. Therefore, we find that the officials responsible for causing such a delay should be enquired into and appropriate punishment should be imposed on them. Therefore, we direct that the Director of Municipal Administration shall cause an enquiry for the abnormal delay and take appropriate action on the official responsible for the delay.

8. Subject to the above direction, the Writ Petition is disposed of. No costs.

(G.BIKSHAPATHY, J.)

25th March, 2005.

SSR (P.S.NARAYANA, J.)

To

1 The Chair Person, Municipal Council, Srikakulam.

2 The Regional Director-cum-Appellate Commissioner, Municipal

Administration, Government of A.P., Visakhapatnam

3 The Commissioner and Director of Municipal Administration, Lower Tank Bund Road, Hyderabad

4 The Director, Municipal Administration, Hyderabad.

5 The Registrar, A.P. Administrative Tribunal, Hyderabad.

6 2 CCs to G.P. for Services-I, High Court of A.P. Hyderabad. (OUT)

7 2 CD copies

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